THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No. 20415 OF 2005

Dated 21st September 2005

Between:

P.Narsaiah S/o.P.Venkat Narsaiah.

...Petitioner

And

The Regional Manager, APSRTC,

Nalgonda Region, Nalgonda District. & others

...Respondents

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WRIT PETITION No.20415 OF 2005

O R D E R:

The petitioner is a driver in the APSRTC. On the ground that he drove the bus entrusted to him in a rash and negligent manner, resulting in an accident, disciplinary proceedings were initiated against him. Thereafter, the Depot Manager, the third respondent, passed an order, dated 18.9.2001, removing the petitioner from service. A criminal case was also filed against the petitioner, being C.C.No.104 of 2001, on the file of the Judicial Magistrate of First Class, Nakrekal. The petitioner preferred an appeal before the second respondent. Through his order, dated 22.12.2001, the second respondent modified the punishment, to be the one of reinstatement into service, by withholding the annual increment, for a period of three years, with cumulative effect. The Criminal Court, in turn, acquitted the petitioner, through its judgment dated 19.7.2002.

Petitioner filed a review before the first respondent, against the orders of third respondent, as modified by the second respondent. He placed reliance upon a circular dated 16.4.1986, which enables the disciplinary, appellate or review authorities, to modify the punishment of removal of a driver, in case, he was acquitted in the criminal case. The grievance of the petitioner is that the first respondent has not passed any orders so far, and the benefit available to him, under the circular dated 16.4.1986, is denied to him, and he seeks appropriate directions in this regard.

Heard the learned counsel for the petitioner and the learned Standing Counsel for respondents.

The order of removal from service, passed against the petitioner, by the third respondent, was modified by the second respondent, through his order dated 22.12.2001, to the one of stoppage of increment. The circular dated 16.4.1986 enables disciplinary, appellate or review authorities, to modify the order of removal, in case, the driver is acquitted in the concerned criminal case. Para 15 thereof reads as under:

> "If the driver is found guilty in the Departmental Enquiry and consequently removed from service and in the event of his acquittal in the court I, he will not be reinstated automatically. If the driver submits an appeal along with a copy of the judgment the competent appellate/review authority which has disposed of the previous appeal will review the case in the light of the judgment. If the acquittal is on technical grounds like witnesses not forthcoming, or turning hostile or benefit of doubt is given to the accused, or where evidence given is contradictory during the course of the trial etc., no reinstatement shall be considered by the appellate/review authority. In the event of reinstatement the driver shall be paid back wages.
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> The appeal shall be submitted by the driver within one month, from the date of pronouncement of the judgment along with a copy of the judgment or a certified copy of the judgment."

An occasion for invoking this provision does not exist for the petitioner. The reason is that much before he was acquitted by the Criminal Court, through judgment dated 19.7.2002, the second respondent modified the order of removal from service, and directed the reinstatement, through his order dated 22.12.2001, in the appeal. The question of invoking Para 15 of the circular would arise, if only the order of removal against a driver was in force, by the time he was acquitted in a criminal case. When the order of removal was modified, by the time the criminal court acquitted the petitioner, he is not entitled to invoke that provision, before the review authority. Notwithstanding this legal aspect, the first respondent has to pass an order in the review filed by the petitioner. Depending on the outcome thereof, the petitioner has to work out his further remedies.

For the foregoing reasons, the writ petition is disposed of, directing the first respondent to pass appropriate orders in the review filed by the petitioner, within a period of six weeks, from the date of receipt of a copy of this order. There shall be no order as to costs.

21st September 2005

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